

**ASSEMBLY BILL**

**No. 1387**

**Introduced by Assembly Member Yee**

February 21, 2003

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An act to amend Sections 1798.3, 1798.16, 1798.24, 1798.70, and 1798.75 of the Civil Code, and to add Sections 9174 and 9926 to the Government Code, relating to the Legislature.

LEGISLATIVE COUNSEL'S DIGEST

AB 1387, as introduced, Yee. Legislature.

Under existing state law, state agencies, other than the Legislature, local agencies, and other specified agencies, are required to comply with the Information Practices Act of 1977 regulating the agencies' maintenance and disclosure of personal information.

This bill would apply the Information Practices Act of 1977 to each house of the Legislature and make other conforming changes in that act.

Under existing law, each house of the Legislature appoints its own employees.

This bill would provide that each house of the Legislature shall use a unique number other than an individual's social security number to identify its employees, beginning January 1, 2005.

Under existing law, state agencies in the executive branch are required to establish a permanent privacy policy that includes certain provisions.

This bill would provide that each house of the Legislature shall establish and maintain a permanent privacy policy that includes the principles set forth in existing law for state agencies.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Section 1798.3 of the Civil Code is amended to read:

1798.3. As used in this chapter:

(a) The term “personal information” means any information that is maintained by an agency that identifies or describes an individual, including, but not limited to, his or her name, social security number, physical description, home address, home telephone number, education, financial matters, and medical or employment history. ~~It~~ “*Personal information*” includes statements made by, or attributed to, the individual.

(b) The term “agency” means every state office, officer, department, division, bureau, board, commission, or other state agency, *and each house of the Legislature*, except that the term ~~agency shall~~ “agency” does not include:

~~(1) The California Legislature.~~

~~(2) Any~~ An agency established under Article VI of the California Constitution.

~~(3)~~

(2) The State Compensation Insurance Fund, except as to any records ~~which~~ that contain personal information about the employees of the State Compensation Insurance Fund.

~~(4)~~

(3) A local agency, as defined in subdivision (b) of Section 6252 of the Government Code.

(c) The term “disclose” means to disclose, release, transfer, disseminate, or otherwise communicate all or any part of any record orally, in writing, or by electronic or any other means to any person or entity.

(d) The term “individual” means a natural person.

(e) The term “maintain” includes maintain, acquire, use, or disclose.

(f) The term “person” means any natural person, corporation, partnership, limited liability company, firm, or association.

(g) The term “record” means any file or grouping of information about an individual that is maintained by an agency by reference to an identifying particular such as the individual’s name, photograph, finger or voice print, or a number or symbol assigned to the individual.

1 (h) The term “system of records” means one or more records;  
2 ~~which~~ *that* pertain to one or more individuals, ~~which is~~ *are*  
3 maintained by any agency, *and* from which information is  
4 retrieved by the name of an individual or by some identifying  
5 number, symbol, or other identifying particular assigned to the  
6 individual.

7 (i) The term “governmental entity,” except as used in Section  
8 1798.26, means any branch of the federal government or of the  
9 local government.

10 (j) The term “commercial purpose” means any purpose ~~which~~  
11 *that* has financial gain as a major objective. It does not include the  
12 gathering or dissemination of newsworthy facts by a publisher or  
13 broadcaster.

14 (k) The term “regulatory agency” means the Department of  
15 Financial Institutions, the Department of Corporations, the  
16 Department of Insurance, the Department of Real Estate, ~~and~~  
17 ~~agencies or an agency~~ of the United States or of any other state *that*  
18 *is* responsible for regulating financial institutions.

19 SEC. 2. Section 1798.16 of the Civil Code is amended to read:

20 1798.16. (a) Whenever an agency collects personal  
21 information, the agency shall maintain the source or sources of the  
22 information, unless the source is the data subject or he or she has  
23 received a copy of the source document, including, but not limited  
24 to, the name of any source who is an individual acting in his or her  
25 own private or individual capacity. If the source is an agency,  
26 governmental entity, or other organization, such as a corporation  
27 or association, this requirement can be met by maintaining the  
28 name of the agency, governmental entity, or organization, as long  
29 as the smallest reasonably identifiable unit of that agency,  
30 governmental entity, or organization is named.

31 (b) On or after July 1, 2001, unless otherwise authorized by the  
32 Department of Information Technology pursuant to Executive  
33 Order D-3-99, whenever an agency *other than a house of the*  
34 *Legislature* electronically collects personal information, as  
35 defined by Section 11015.5 of the Government Code, the agency  
36 shall retain the source or sources or any intermediate form of the  
37 information, if either are created or possessed by the agency,  
38 unless the source is the data subject that has requested that the  
39 information be discarded or the data subject has received a copy  
40 of the source document.

(c) *Whenever a house of the Legislature electronically collects personal information, as defined by Section 11015.5 of the Government Code, the house shall retain the source or sources or any intermediate form of the information, if either are created or possessed by the house, unless the source is the data subject that has requested that the information be discarded or the data subject has received a copy of the source document.*

(d) The agency shall maintain the source or sources of the information in a readily accessible form so as to be able to provide it to the data subject when ~~they inspect~~ *the subject inspects* any record pursuant to Section 1798.34. This section ~~shall~~ *does* not apply if the source or sources are exempt from disclosure under the provisions of this chapter.

SEC. 3. Section 1798.24 of the Civil Code is amended to read: 1798.24. ~~No~~ *An* agency may *not* disclose ~~any~~ personal information in a manner that would link the information disclosed to the individual to whom it pertains unless the disclosure of the information is:

(a) To the individual to whom the information pertains.

(b) With the prior written voluntary consent of the individual to whom the record pertains, but only if ~~such~~ *that* consent has been obtained not more than 30 days before the disclosure, or in the time limit agreed to by the individual in the written consent.

(c) To the duly appointed guardian or conservator of the individual or a person representing the individual provided that it can be proven with reasonable certainty, through the possession of agency forms, documents, or correspondence, that such person is the authorized representative of the individual to whom the information pertains.

(d) To those officers, employees, attorneys, agents, or volunteers of the agency ~~which~~ *that* has custody of the information if the disclosure is relevant and necessary in the ordinary course of the performance of their official duties and is related to the purpose for which the information was acquired.

(e) To a person, or to another agency where the transfer is necessary for the transferee agency to perform its constitutional or statutory duties, and the use is compatible with a purpose for which the information was collected and the use or transfer is accounted for in accordance with Section 1798.25. With respect to information transferred from a law enforcement or regulatory

1 agency, or information transferred to another law enforcement or  
2 regulatory agency, a use is compatible if the use of the information  
3 requested is needed in an investigation of unlawful activity under  
4 the jurisdiction of the requesting agency or for licensing,  
5 certification, or regulatory purposes by that agency.

6 (f) To a governmental entity when required by state or federal  
7 law.

8 (g) Pursuant to the California Public Records Act, ~~Chapter~~  
9 *(Chapter 3.5 (commencing with Section 6250) of Division 7 of*  
10 *Title 1 of the Government Code Code) or the Legislative Open*  
11 *Records Act (Article 3.5 (commencing with Section 9070) of*  
12 *Chapter 1.5 of Part 1 of Division 2 of Title 2 of the Government*  
13 *Code).*

14 (h) To a person who has provided the agency with advance  
15 adequate written assurance that the information will be used solely  
16 for statistical research or reporting purposes, but only if the  
17 information to be disclosed is in a form that will not identify any  
18 individual.

19 (i) Pursuant to a determination by the agency ~~which~~ *that*  
20 maintains information that compelling circumstances exist which  
21 affect the health or safety of an individual, if upon the disclosure  
22 notification is transmitted to the individual to whom the  
23 information pertains at his or her last known address. Disclosure  
24 ~~shall~~ *may* not be made if it is in conflict with other state or federal  
25 laws.

26 (j) To the State Archives of the State of California as a record  
27 ~~which~~ *that* has sufficient historical or other value to warrant its  
28 continued preservation by the California state government, or for  
29 evaluation by the Director of General Services or his or her  
30 designee to determine whether the record has further  
31 administrative, legal, or fiscal value.

32 (k) To any person pursuant to a subpoena, court order, or other  
33 compulsory legal process if, before the disclosure, the agency  
34 reasonably attempts to notify the individual to whom the record  
35 pertains, and if the notification is not prohibited by law.

36 (l) To any person pursuant to a search warrant.

37 (m) Pursuant to Article 3 (commencing with Section 1800) of  
38 Chapter 1 of Division 2 of the Vehicle Code.

39 (n) For the sole purpose of verifying and paying government  
40 health care service claims made pursuant to Division 9

1 (commencing with Section 10000) of the Welfare and Institutions  
2 Code.

3 (o) To a law enforcement or regulatory agency when required  
4 for an investigation of unlawful activity or for licensing,  
5 certification, or regulatory purposes, unless the disclosure is  
6 otherwise prohibited by law.

7 (p) To another person or governmental organization to the  
8 extent necessary to obtain information from the person or  
9 governmental organization as necessary for an investigation by the  
10 agency of a failure to comply with a specific state law ~~which~~ *that*  
11 the agency is responsible for enforcing.

12 (q) To an adopted person and is limited to general background  
13 information pertaining to the adopted person's natural parents,  
14 provided that the information does not include or reveal the  
15 identity of the natural parents.

16 (r) To a child or a grandchild of an adopted person and  
17 disclosure is limited to medically necessary information  
18 pertaining to the adopted person's natural parents. However, the  
19 information, or the process for obtaining the information, ~~shall~~  
20 *may* not include or reveal the identity of the natural parents. The  
21 State Department of Social Services shall adopt regulations  
22 governing the release of information pursuant to this subdivision  
23 by July 1, 1985. The regulations shall require licensed adoption  
24 agencies to provide the same services provided by the department  
25 as established by this subdivision.

26 (s) To a committee of the Legislature or to a Member of the  
27 Legislature, or his or her staff when authorized in writing by the  
28 ~~member~~ *Member*, where the ~~member~~ *Member* has permission to  
29 obtain the information from the individual to whom it pertains or  
30 where the ~~member~~ *Member* provides reasonable assurance that he  
31 or she is acting on behalf of the individual.

32 (t) To the University of California or a nonprofit educational  
33 institution conducting scientific research, provided the request for  
34 information includes assurances of the need for personal  
35 information, procedures for protecting the confidentiality of the  
36 information and assurances that the personal identity of the subject  
37 ~~shall~~ *will* not be further disclosed in individually identifiable form.

38 (u) To an insurer if authorized by Chapter 5 (commencing with  
39 Section 10900) of Division 4 of the Vehicle Code.

1 This article ~~shall~~ *may* not be construed to require the disclosure  
2 of personal information to the individual to whom the information  
3 pertains when that information may otherwise be withheld as set  
4 forth in Section 1798.40.

5 (v) Pursuant to Section 1909, 8009, or 18396 of the Financial  
6 Code.

7 SEC. 4. Section 1798.70 of the Civil Code is amended to read:  
8 1798.70. This chapter shall be construed to supersede any  
9 other provision of state law, including Section 6253.5 of the  
10 Government Code, or any exemption in Section 6254-~~or~~, 6255,  
11 9075, *or 9080* of the Government Code, ~~which that~~ *that* authorizes any  
12 agency to withhold from an individual any record containing  
13 personal information ~~which that~~ *that* is otherwise accessible under the  
14 provisions of this chapter.

15 SEC. 5. Section 1798.75 of the Civil Code is amended to read:  
16 1798.75. This chapter ~~shall does not be deemed to~~ supersede  
17 Chapter 3.5 (commencing with Section 6250) of Division 7 of  
18 Title 1 *or Article 3.5 (commencing with Section 9070) of Chapter*  
19 *1.5 of Part 1 of Division 2 of Title 2* of the Government Code,  
20 except as to the provisions of Sections 1798.60, 1798.69, and  
21 1798.70.

22 SEC. 6. Section 9174 is added to the Government Code, to  
23 read:

24 9174. On and after January 1, 2005, each house of the  
25 Legislature shall use a unique identifying number other than an  
26 individual's social security number to identify its employees.

27 SEC. 7. Section 9926 is added to the Government Code, to  
28 read:

29 9926. (a) Each house of the Legislature shall establish and  
30 maintain a permanent privacy policy, in adherence with the  
31 Information Practices Act of 1977 (Title 1.8 (commencing with  
32 Section 1798) of Part 4 of Division 3 of the Civil Code), that  
33 includes, but is not limited to, the following principles:

34 (1) Personally identifiable information is obtained only  
35 through lawful means.

36 (2) The purposes for which personally identifiable data are  
37 collected are specified at or prior to the time of collection, and any  
38 subsequent use is limited to the fulfillment of purposes not  
39 inconsistent with those purposes previously specified.

1 (3) Personal data is not disclosed, made available, or otherwise  
2 used for purposes other than those specified, except with the  
3 consent of the subject of the data, or as authorized by law or  
4 regulation.

5 (4) Personal data collected is relevant to the purpose for which  
6 it is collected.

7 (5) The general means by which personal data is protected  
8 against loss, unauthorized access, use modification, or disclosure  
9 is posted, unless that disclosure of general means would  
10 compromise legitimate objectives of either house of the  
11 Legislature or law enforcement purposes.

12 (b) Each house of the Legislature shall designate a position  
13 within the house, the duties of which shall include, but not be  
14 limited to, responsibility for the privacy policy within that house.

